

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PRESTO QUALITY CARE	:	CIVIL ACTION NO.
CORPORATION,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
DEPARTMENT OF THE TREASURY –	:	
INTERNAL REVENUE SERVICE,	:	
Respondent	:	

PETITION TO QUASH SUMMONS

Petitioner Presto Quality Care Corporation, by its undersigned attorney, requests pursuant to 26 U.S.C. § 7609 that this Court grant Petitioner's Petition to Quash Summons issued by Respondent United States of America, Department of the Treasury – Internal Revenue Service, and in support of its Petition states:

INTRODUCTION

1. This civil action against the United States of America has been brought to quash an Internal Revenue Service Summons issued to Wells Fargo Bank, N.A., Legal Order Processing, MAC Y1372-110, 401 Market Street, Philadelphia, PA 191065, which is located in this District, to appear before an Agent of the Internal Revenue Service on March 21, 2013, for the ostensible purpose of producing certain books, records and other data allegedly "relating to the tax liability or for the purposes of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning" Petitioner Presto Quality Care Corporation over the eight month period of July 1, 2012 to February 20, 2013. A true and correct copy of the Summons at issue is attached to this Petition as Exhibit "A."

2. The Summons was issued despite the Internal Revenue Service's complete lack of

need for and the complete lack of relevance of the documents and information sought to any legitimate tax assessment or tax collection purpose, and for the sole purpose of harassing Petitioner and causing economic harm by damaging its relationship with its bank.

PARTIES

3. Petitioner Presto Quality Care Corporation (hereinafter “PQCC”), is a Corporation of the State of Nevada, organized under Subchapter C of the Internal Revenue Code, with its principal place of business located at 105 S.E.18th Avenue, Portland, Oregon 97214; PQCC, whose president and majority shareholder is Douglas Paul Stanford, operates a medical practice which provides primary care, urgent care and pain management.

4. Respondent United States of America, Department of the Treasury – Internal Revenue Service (hereinafter “IRS”), is a federal government agency responsible for helping compliant taxpayers with the tax laws and ensuring that non-compliant taxpayers pay their fair share, whose mission is to “[p]rovide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.” Internal Revenue Manual (IRM) § 1.1.1.1(2), §1.1.1.1(1).

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 26 U.S.C. § 7609(h). Venue is proper pursuant to 26 U.S.C. § 7609(h) because the entity summoned is deemed to reside in this judicial district pursuant to 28 U.S.C. § 1391(c)(2).

FACTUAL ALLEGATIONS

6. PQCC is a health care provider whose president and majority shareholder is Douglas Paul Stanford (hereinafter “Stanford”).

7. Stanford has been the subject of extensive media attention in the State of Oregon and elsewhere by virtue of his advocacy of the legalization of marijuana for medical and other uses, and, specifically, in connection with his promotion and support of the Oregon Cannabis Tax Act of 2012, a ballot initiative to legalize and tax the sale of marijuana in Oregon.

8. As the result of embezzlement and malfeasance on the part of PQCC's bookkeeper, PQCC did not file a Form 941 Employer's Quarterly Federal Tax Return for the Quarter ending September 30, 2012 or transmit payment of payroll taxes withheld during that Quarter.

9. On December 26, 2012, the Internal Revenue Service made an assessment of unpaid federal payroll taxes in the sum of \$66,872.78.

10. Without prior notice of any kind and without providing PQCC with an opportunity to pay or make arrangements to pay the assessed payroll tax liability, the Internal Revenue Service filed a Notice of Federal Tax Lien in the amount of the assessment against PQCC in Multnomah County, Oregon, on or about January 10, 2013. A true and correct copy of the NTFL is attached to this Petition as Exhibit "B.

11. Without prior notice of any kind and without providing PQCC with an opportunity to pay or make arrangements to pay the assessed payroll tax liability, the Internal Revenue Service issued a Final Notice of Intent to Levy to PQCC on or about January 19, 2013.

12. In response to the Notice of Federal Tax Lien and Notice of Levy, PQCC exercised its appeal rights by filing a timely Form 12153 Request for Collection Due Process Hearing on February 2, 2013, thereby preventing the levy. A true and correct copy of the Form 12153 is attached to this Petition as Exhibit "C.

13. The Form 12153 explained that “[PQCC’s] bookkeeper from 3/8/12 to 12/7/12 embezzled thousands of dollars, hid & neglected important notices, & walked out when confronted.”

14. In its Form 12153 PQCC requests an Installment Agreement and subordination or withdrawal of the Federal Tax Lien.

15. As of the time of the filing of this Petition, PQCC’s Form 12153 has not been acknowledged and no hearing has been scheduled.

16. PQCC acknowledges its federal tax obligations and expects to be fully compliant in its Form 941 filings and payroll deposits by May or June 2013.

17. On February 14, 2013, the Internal Revenue Service notified PQCC by letter that no Form 941 had been filed for the Quarter ending December 31, 2012 and that no Form 940 Employer's Annual Federal Unemployment Tax Return had been received for Tax Year 2012; the letter gave PQCC 30 days – i.e., until March 16, 2013 – to forward signed copies of previously filed returns or to prepare, sign and file the tax returns identified in the letter. A true and correct copy of the February 14, 2013 letter is attached to this Petition as Exhibit “D.

18. On or about February 21, 2013, the Internal Revenue Service nevertheless issued the Summons described on Paragraph 1 of this Petition.

19. The Summons served on Wells Fargo Bank, N.A., PQCC’s business bank, orders the Bank to respond on March 21, 2013 at 10:00 a.m. by mail addressed to Revenue Officer Tonni Carpenter, internal revenue Service, 250 N.W. Franklin Avenue, Suite 301, Bend, OR 97701-4916, by producing:

[1.] Bank signature cards of (*Entity Name*) Presto Quality Care in effect from

July 1, 2012 to February 20, 2013

[2.] Corporate resolutions of *(Entity Name)* Presto Quality Care from July 1, 2012 to February 20, 2013

[3.] *(Number)* 12 Cancelled checks issued each month by taxpayer for *(Entity Name)* Presto Quality Care during each month of the period from July 1, 2012 to February 20, 2013 ☐ Front of Checks Only ☒ Both Front and Back of Checks

[4.] Loan applications, agreements, and related records, *(including corporate financial statements)*, submitted by, entered into by, or in effect regarding *(Entity Name)* Presto Quality Care from July 1, 2012 to February 20, 2013

20. Since the Summons does not even request bank statements revealing the amount of funds available in PQCC's account or accounts to satisfy PQCC's outstanding payroll tax liability, it is obvious that the Summons does not relate to the Levy noticed by the Internal Revenue Service.

21. Instead, the Summons appears calculated to elicit information of the type sought in Trust Fund Recovery Penalty matters to ascertain "responsible persons" within a business entity in circumstances in which payment of outstanding payroll taxes cannot be secured from the funds of the business, a purpose which is at the present time unwarranted and at best premature, and is in any event superfluous since it is common knowledge that Stanford runs PQCC; the identities of the other officers of PQCC are, moreover, a matter of public record.

REASONS FOR GRANTING RELIEF

22. For a Summons to be valid and enforceable, the Court must find from all facts "that the summons (1) was issued pursuant to a 'legitimate purpose'; (2) seeks information 'relevant' to that purpose; (3) seeks information that is 'not already within the Commissioner's possession'; and (4) satisfies all 'administrative steps required by the Code.'" *Stewart v. United States*, 511 F.3d 1251,1254 (9th Cir. 2008) (quoting *United States v. Powell*, 379 U.S. 48, 57-58 (1964)).

23. For a Summons to have a legitimate purpose, the information sought must be relevant to and probative of facts which have a civil tax purpose. *See United States v. Jose*, 131 F.3d 1325,1328 (9th Cir. 1997).

24. IRS Summonses "issued for an improper purpose, such as to harass the taxpayer, are not enforced by courts as enforcement would constitute an abuse of the court's process." *Powell*, 379 U.S. at 58.

25. "[T]he taxpayer may challenge the summons on any appropriate grounds" including any other abuse of the court's process. *United States v. Riewe*, 676 F.2d 418,420 (10th Cir. 1982) (citing *Reisman v. Caplin*, 375 U.S. 440,449 (1964)); *see also United States v. Jose*, 131 F.3d 1325,1328 (9th Cir. 1997) (en banc).

26. "In terms of protection to the individual, a summons submitted to a court for enforcement is at least equivalent to a search warrant." *United States v. Roundtree*, 420 F.2d 845,851 (5th Cir. 1970). The district court must "limit the invasion of privacy through the judicial scrutiny to which a summons is subject for its enforcement and through the standards enumerated in *Powell* of legitimate purpose, proper procedure, relevance, and refusal to allow abuse of the courts' process." *Id.*

27. In assessing the taxpayer's challenge, the Court must determine first, whether the Service is acting in good faith in seeking the information from the summons for a civil purpose without harassment, focusing on the motives of the institution and the individual agent; and second, whether the summons could have the effect of an abuse of process.

28. PQCC maintains that the Summons issued to Wells Fargo Bank must be quashed because the Summons was not issued pursuant to a legitimate purpose; seeks information not

relevant to any legitimate purpose; seeks information already within the IRS's possession; and was not issued in compliance with the administrative steps required by the Internal Revenue Code.

29. PQCC maintains instead that the true purpose of the Summons is to harass PQCC and Stanford, its president and majority shareholder, for purely political and tactical reasons relating to Stanford's advocacy and financial support of Oregon legislation to legalize and tax the sale of marijuana.

30. Pursuant to Code § 7609(b)(2), the taxpayer entitled to notice of the Summons may institute a proceeding in the District Court having jurisdiction to quash the Summons within 20 days after notice of the Summons is given.

31. Pursuant to Code § 7609(d)(2), "[n]o examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made . . . where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash."

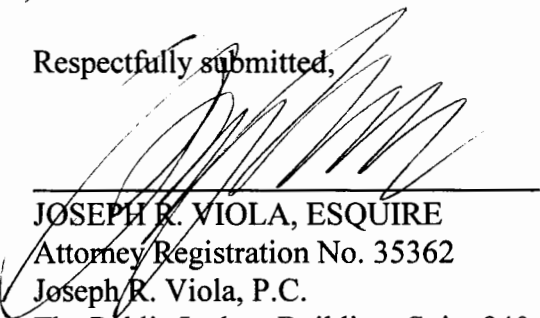
32. Needless to say, PQCC adamantly opposes the production or examination of the records identified in the Summons pending disposition of this Petition.

PRAYER FOR RELIEF

WHEREFORE, for all the foregoing reasons, Petitioner Presto Quality Care Corporation respectfully requests pursuant to 26 U.S.C. § 7609 that this Court grant its Petition and Quash the Summons issued by Respondent United States of America, Department of the Treasury – Internal

Revenue Service to Wells Fargo Bank, N.A., in this matter.

Respectfully submitted,



JOSEPH R. VIOLA, ESQUIRE

Attorney Registration No. 35362

Joseph R. Viola, P.C.

The Public Ledger Building, Suite 940

150 South Independence Mall West

Philadelphia, PA 19106-3410

(215) 825-50080

*Attorney for Petitioner Presto Quality Care
Corporation*

DATED: March 7, 2013

Exhibit “A”



Financial Records Summons

In the matter of Douglas P Stanford, President, Presto Quality Care, 105 SE 18th Ave, Portland, OR 97214-1559

Internal Revenue Service (Identify Division) Small Business / Self Employed

Periods: September 30, 2012

The Commissioner of Internal Revenue

To: Wells Fargo Bank NA - Legal Order

At: MAC Y1372-110, 401 Market St, Philadelphia, PA 19106

You are hereby summoned and required to appear before TONNI T CARPENTER, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the taxpayer identified above for the periods shown.

Copies of documents and records that you possess or control that concern banking matters of the taxpayer named above, as described in the subparagraphs checked below for the periods shown:

- ☒ Bank signature cards of (Entity Name) Presto Quality Care
in effect from July 01, 2012 to February 20, 2013
- ☒ Corporate resolutions of (Entity Name) Presto Quality Care
in effect from July 01, 2012 to February 20, 2013
- ☒ Bank statements of (Entity Name) Presto Quality Care
from July 01, 2012 to February 20, 2013
- ☒ (Number) 12 Cancelled checks issued each month by taxpayer for (Entity Name) Presto Quality Care
during each month of the period from July 01, 2012 to February 20, 2013. ☐ Front of Checks Only ☒ Both Front and Back of Checks
- ☒ Loan applications, agreements, and related records, (including corporate financial statements), submitted by, entered into by, or in effect regarding (Entity Name) Presto Quality Care
from July 01, 2012 to February 20, 2013

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

250 NW FRANKLIN AVE SUITE 301, BEND, OR 97701-4916 - (541)322-4027

Place and time for appearance: At respond by mail



IRS

Department of the Treasury
Internal Revenue Service

www.irs.ustreas.gov

Form 6639 (Rev. 8-2010)
Catalog Number 250041

on the 21st day of March, 2013 at 10:00 o'clock A m.

Issued under authority of the Internal Revenue Code this 21st day of February, 2013

Tonni Carpenter

Signature of issuing officer

Tonni Carpenter

Signature of Approving Officer (if applicable)

Tonni Carpenter Revenue Officer

Title

For Eric Smith Group Manager

Title

Part C -- to be given to noticee

Exhibit “B”

Form 668 (Y)(c)

(Rev. February 2004)

1872

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:

SMALL BUSINESS/SELF EMPLOYED AREA #6

(800) 913-6050

Serial Number

915808013

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer

PRESTO QUALITY CARE, a Corporation
% ACCOUNTING OFFICE

Residence

105 SE 18TH AVE
PORTLAND, OR 97214-1559

- This Notice of Federal Tax Lien has been filed as a matter of public record.
- IRS will continue to charge penalty and interest until you satisfy the amount you owe.
- Contact the Area Office Collection Function for information on the amount you must pay before we can release this lien.
- See the back of this page for an explanation of your Administrative Appeal rights.

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
941	09/30/2012	[REDACTED]	12/24/2012	01/23/2023	66872.78
Place of Filing					
RECORDING SECTION MULTNOMAH COUNTY PORTLAND, OR 97205					
Total					66872.78

This notice was prepared and signed at SEATTLE, WA, on this,
the 10th day of January, 2013.

Signature

for TONNI T CARPENTER

Title

REVENUE OFFICER
(541) 322-4027

26-07-4631

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien
Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 3 - Taxpayer's Copy

CAT. NO 60025X
Form 668 (Y)(c) (Rev. 02-04)

Exhibit C

Exhibit "C"

Request for a Collection Due Process or Equivalent Hearing

Use this form to request a Collection Due Process (CDP) or equivalent hearing with the IRS Office of Appeals if you have been issued one of the following lien or levy notices:

- Notice of Federal Tax Lien Filing and Your Right To A Hearing Under IRC 6320,
- Notice of Intent to Levy and Notice of Your Right To A Hearing,
- Notice of Jeopardy Levy and Right of Appeal,
- Notice of Levy on Your State Tax Refund,
- Notice of Levy and Notice of Your Right to a Hearing.

Complete this form and send it to the address shown on your lien or levy notice. Include a copy of your lien or levy notice to ensure proper handling of your request.

Call the phone number on the notice or 1-800-829-1040 if you are not sure about the correct address or if you want to fax your request.

You can find a section explaining the deadline for requesting a Collection Due Process hearing in this form's instructions. If you've missed the deadline for requesting a CDP hearing, you must check line 6 (Equivalent Hearing) to request an equivalent hearing.

1. Taxpayer Name: (Taxpayer 1)

Presto Quality Care

Taxpayer Identification Number

Current Address:

105 SE 18th Ave.

City: Portland State: OR Zip Code: 97214

2. Telephone Number and Best Time to Call During Normal Business Hours

Home: (503) 358-2418 9-5 ☒ am. ☒ pm.
Work: (503) 278-3654 9-5 ☒ am. ☒ pm.

3. Taxpayer Name: (Taxpayer 2)

Taxpayer Identification Number

Current Address:

(If Different from Address Above)

City: State: Zip Code:

4. Telephone Number and Best Time to Call During Normal Business Hours

Home: () - ☐ am. ☐ pm.
Work: () - ☐ am. ☐ pm.

5. Tax Information as Shown on the Lien or Levy Notice (If possible, attach a copy of the notice)

Type of Tax (Income, Employment, Excise, etc. or Civil Penalty)	Tax Form Number (1040, 941, 720, etc)	Tax Period or Periods
Employment, Penalty	941, 940	8/15/12, 9/17/12, 10/15

Request for a Collection Due Process or Equivalent Hearing

6. Basis for Hearing Request (Both boxes can be checked if you have received both a lien and levy notice)



Filed Notice of Federal Tax Lien



Proposed Levy or Actual Levy

7. Equivalent Hearing (See the instructions for more information on Equivalent Hearings)



I would like an Equivalent Hearing – I would like a hearing equivalent to a CDP Hearing if my request for a CDP hearing does not meet the requirements for a timely CDP Hearing

8. Check the most appropriate box for the reason you disagree with the filing of the lien or the levy. See page 4 of this form for examples. You can add more pages if you don't have enough space.

If, during your CDP Hearing, you think you would like to discuss a Collection Alternative to the action proposed by the Collection function it is recommended you submit a completed Form 433A (Individual) and/or Form 433B (Business), as appropriate, with this form. See www.irs.gov for copies of the forms.

Collection Alternative



Installment Agreement



Offer in Compromise



I cannot pay balance

Lien



Subordination



Discharge



Withdrawal

Please explain:

Bookkeeper embezzlement & sabotage
will fax 433B form.

My Spouse is Responsible



Innocent Spouse Relief (Please attach Form 8857,
Request for Innocent Spouse Relief, to your request.)

Other (For examples, see page 4)



Reason (You must provide a reason for the dispute or your request for a CDP hearing will not be honored. Use as much space as you need to explain the reason for your request. Attach extra pages if necessary.):

Our bookkeeper from 3/8/12 to 12/7/12 embezzled thousands of dollars, hid & neglected important notices, & walked out when confronted.

9. Signatures

I understand the CDP hearing and any subsequent judicial review will suspend the statutory period of limitations for collection action. I also understand my representative or I must sign and date this request before the IRS Office of Appeals can accept it. If you are signing as an officer of a company add your title (president, secretary, etc.) behind your signature.

Taxpayer 1's signature

Date

DP Crawford, President 2/2/13

Taxpayer 2's Signature (if a joint request, both must sign)

Date



I request my CDP hearing be held with my authorized representative (attach a copy of Form 2848)

Authorized Representative's Signature

Authorized Representative's Name

Telephone Number

IRS Use Only

IRS Employee (Print)

Employee Telephone Number

IRS Received Date

Exhibit “D”

Internal Revenue Service
250 NW FRANKLIN AVE SUITE 301
BEND, OR 97701-4916000

Department of the Treasury

Date: 02/14/2013

PRESTO QUALITY CARE
105 SE 18TH AVE
PORTLAND, OR 97214-1559000

Employer Identification Number:

[REDACTED]

Forms:

941, 940

Tax Period(s) Ended:

12/31/2012, 12/31/2012

Person to Contact:

TONNI T CARPENTER

Employee Identification Number:

91-06039

Contact Telephone Number:

(541)322-4027

Contact Hours:

9:00 am to 2:30 pm

Fax Number:

(866)734-7802

We have reviewed your tax records and have found no record of you filing the tax forms identified above. We believe you are liable for filing and have prepared a tax return for each tax period identified above. If you agree that the returns are correct, please sign one copy of each and return it in the enclosed envelope. Keep a copy of the completed returns for your records.

If you do not agree that we have prepared the returns correctly, you have 30 days from the date of this letter (60 days if this letter is addressed to you outside the United States) to do one of the following:

1. If you have already filed the returns for these tax periods, please send us signed copies in the enclosed envelope; or
2. Prepare and sign tax returns that you believe are correct and return them to us in the enclosed envelope; or
3. Mail us any additional information you would like us to consider; or
4. Request a conference with the person whose name and telephone number are shown above. At that time you may bring any additional information you would like considered. When you plan to come in for a discussion, please contact us in advance so that we can arrange a convenient time and place.

What will happen if you do not respond to this letter?

The Internal Revenue Code Section 6020(b) gives us the authority to prepare and file tax returns on your behalf. Therefore, if we do not hear from you within 30 days from the date of this letter (60 days if this letter is addressed to you outside the United States), we will process the enclosed tax returns that we have prepared for you. You will then be billed for the amount of tax due, plus any additional penalties and interest.

Your Appeal Rights And How To Prepare A Protest If You Do Not Agree

If you do not agree with any or all of the IRS findings given you, then you may request a meeting or telephone conference with the supervisor of the person who issued the findings. If you still do not agree, you may appeal your case to the Area Director of General Appeals. For your convenience, we have enclosed Publication 5, *Your Appeal Rights and How to Prepare a Protest If You Don't Agree*.

If you have any questions, please contact the person whose name and telephone number are shown on page one of this letter.

If you write to us for any reason about this matter, please attach a copy of this letter to help identify your case.

Thank you for your cooperation.

Sincerely,


TONNI T CARPENTER
REVENUE OFFICER

Enclosures:
Completed Tax Returns
Envelope
Blank Forms
Publication 5